

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

THURSDAY, THE 25TH DAY OF JUNE 2015/4TH ASHADHA, 1937

Crl.Rev.Pet.No. 1937 of 2014  
-----

AGAINST THE JUDGMENT IN CMP 5210/2013 of J.M.F.C.-I,  
CHERTHALA.

REVISION PETITIONER/RESPONDENT:  
-----

ARUN, AGED 31 YEARS,  
S/O CHANDRAN, ELAYAEDATHU HOUSE, THANISSERY P.O.,  
KARALAM, MUKUNDAPURAM TALUK, THRISSUR DISTRICT

BY ADVS.SRI.G.SREEKUMAR (CHELUR)  
SRI.N.L.BITTO

RESPONDENT(S)/STATE OF KERALA AND COMPLAINANT:  
-----

1. STATE OF KERALA,  
RERPESENTED BY THE PUBLIC PROSECUTOR,  
HIGH COURT OF KERALA, ERNAKULAM-682031.

2. SUNIMOL, AGED 26 YEARS,  
W/O ARUN, ANIYATHARA HOUSE, VARANAD P.O.,  
CHERTHALA, ALAPPUZHA DISTRICT-676 001

R2 BY ADV. SMT.SUNIMOL (PARTY),B/O.  
BY ADV. SMT.G.KRISHNAKUMARI

R1 BY PUBLIC PROSECUTOR SRI. JUSTINE JACOB

THIS CRIMINAL REVISION PETITION HAVING BEEN  
FINALLY HEARD ON 25-06-2015, THE COURT ON THE SAME DAY  
PASSED THE FOLLOWING:

**K. HARILAL, J.**

-----  
**Crl.R.P. No.1937 of 2014**  
-----

**Dated this the 25<sup>th</sup> day of June, 2015**

**ORDER**

The revision petitioner herein the the respondent in C.M.P.No.5210 of 2013 on the files of the Judicial First Class Magistrate's Court, Cherthala. The above C.M.P. was filed by the 2<sup>nd</sup> respondent herein, who is the wife of the revision petitioner, claiming maintenance allowance under Sec.125 of the Cr.P.C.

2. On 25/6/2013 notice was issued to the revision petitioner with hearing date of 11/9/2013. On 11/9/2013, the respondent was present and the revision petitioner was absent. For objection and hearing, again the case was posted to 27/11/2013. On 27/11/2013, the revision petitioner was present and

the case was posted for objection and hearing to 7/2/2014. On 7/2/2014 the respondent was present; but the revision petitioner was not present and no objection was filed. In the above context, the court below allowed the petition, as such, and issued distress warrant against the revision petitioner. The legality of the order dated 7/2/2014, issuing warrant to the revision petitioner, is under challenge in this revision petition.

3. The learned counsel for the revision petitioner submits that the entire proceedings initiated in the above C.M.P. are vitiated by procedural irregularity and the courts below has absolutely went wrong by allowing petition and issuing distress warrant simultaneously against the revision petitioner.

4. Per contra, the learned counsel for the 2<sup>nd</sup> respondent advanced arguments to justify the proceedings whereby the warrant issued against the revision petitioner.

5. Going by the order sheet produced as Annexure-II, in this revision petition, it is seen that the court below has went wrong by allowing the petition and issuing warrant simultaneously on the same day on the reason that the revision petitioner was absent on 7/2/2014 when the case was taken up for hearing.

6. It is pertinent to note that on the previous date of posting the petitioner was present and sought for time for filing objecting and hearing. Further going by the proceedings also, it could be seen that the court below had proceeded hastily by issuing warrant simultaneously on the same day itself. I find that the proceedings dated 7/2/2014 are vitiated by procedural irregularity. Therefore, all further proceedings initiated from 26/4/2014 will stand set aside and the matter is remitted back to the court below for fresh consideration. The court below is directed to proceed with the case from the stage at which the case was posted on 7/2/2014 and to pass orders afresh after

affording sufficient opportunities of being heard to the petitioner herein.

This revision petition is disposed of as above.

Sd/-

**Nan/**

**(K. HARILAL, JUDGE)**

//true copy//

P.S. to Judge